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## INDIA AS A PREFERRED SEAT FOR ARBITRATION: PROMISE VS. PERFORMANCE POST-AMENDMENTS


***~ Mahi Saxena***



### ABSTRACT

In recent history, India has undertaken a series of legislative reforms to transform itself into a global hub for commercial arbitration. The Arbitration and Conciliation (Amendment) Acts of 2015, 2019, and 2021 reflects the government's intention to modernise arbitration in India and minimise judicial intervention to promote institutional arbitration. This paper critically examines the extent to which these reforms have succeeded in fulfilling India's aspiration to become the host country for commercial arbitration. It examines the role of these amendments in aligning India's arbitration framework with International best practices and enhancing its credibility as a preferred seat for arbitration. Through doctrinal and comparative analysis, this research paper explores the evolution of the Indian arbitration system post amendments by analysing its key provisions like fast-track arbitration, enforcement timelines, and the establishment of the Arbitration Council of India. The study also compares the Indian model of arbitration with existing leaders like Singapore and the United Kingdom. This paper further analyses the challenges faced by India to fulfill its aspirations to be the preferred arbitration seat for the world, including inconsistent judicial approaches, delayed implementation of the regulatory framework, and limited foreign stakeholder confidence. Unlike previous studies, this paper includes a post-2021 lens on regulatory and institutional shortfalls. The findings of the research suggest that India has made significant progress in legislative reforms, however, the ground-level performance continues to lag behind its aspirations. There is a need for ground-level changes to fulfill India's global hub dream. For India to emerge as a truly preferred arbitration seat, it should prioritise deeper institutional strengthening, judicial training, and robust enforcement reforms to truly compete with global arbitration leaders.

**Keywords**: Arbitration, India, Global hub, Arbitration and Conciliation Act, 2015 Amendment, 2019 Amendment, 2021 Amendment, Judicial intervention, Institutional Arbitration, Enforcement.

## INTRODUCTION

In the last two decades, there has been an increase in the global trend of states competing to become an arbitration friendly jurisdiction. States compete to be recognised as the preferred seat for commercial arbitration. Countries like Singapore, Hong Kong, and the United Kingdom have achieved international recognition by promoting minimal judicial interference, institutional efficiency, and enforceability of arbitral awards.[1] Given these circumstances, India has historically struggled with an arbitration framework that is cursed by excessive judicial intervention, procedural delays, and inadequate institutional support.[2] The Arbitration and Conciliation Act, 1996 of India, though modelled on the UNCITRAL Model Law, was insufficient to mitigate these structural inefficiencies. Therefore, India was seen as an unreliable and unpredictable seat for arbitration.

This paper critically examines the extent to which India's recent legislative reforms, such as the Arbitration and Conciliation (Amendment) Act of 2015, 2019, and 2021, have succeeded in positioning India as a viable and attractive seat for international commercial arbitration. It aims to assess whether these reforms have translated into meaningful practical change and brought India's arbitral framework closer to international standards.

## RESEARCH QUESTIONS

1. What are the key procedural features and provisions introduced by the Arbitration and Conciliation (Amendment) Act of 2015, 2019, and 2021?
2. Have the legislative reforms made by the amendments in 2015, 2019, and 2021 enhanced India's credibility and attractiveness as a preferred seat for commercial Arbitration?
3. How do international parties, arbitrators, and institutions now view India as an arbitral jurisdiction post-amendment?

## RESEARCH METHODOLOGY

[1] Born, G. B. (2021). *International commercial arbitration* (3rd ed., pp. 2135–2140). Kluwer Law International.
[2] Malhotra, P. K. (2017). Judicial intervention in arbitration: An Indian perspective. *Indian Journal of Arbitration Law, 6*(1), 1–7.

This paper uses a doctrinal research approach to analyse primary sources such as legislation, judicial decisions, law commission reports, and other official reports. A comparative analysis would also be conducted between India and already recognised arbitral hubs like Singapore and the United Kingdom to evaluate institutional efficiency. The paper also reviews relevant case laws that interpret the post-amendment regime.

## LITERATURE REVIEW

The transformation of India's arbitration regime has been the subject of increasing scholarly and professional focus, particularly after the 2015, 2019, and 2021 amendments to the Arbitration and Conciliation Act, 1996. Much of the literature acknowledges that these reforms reflect a clear legislative intent to modernize India's arbitration ecosystem and align it with international standards. However, a more nuanced view emerges when evaluating how these reforms have translated into practice.

Ghosh (2016) presents one of the earliest commentaries on the 2015 Amendment Act, appreciating the introduction of time limits, fast-track procedures, and the removal of the automatic stay provision on the enforcement of arbitral awards.[3] He notes, however, that these mechanisms may be difficult to implement effectively without supporting judicial behavior. Similarly, Krishnan (2018) critiques India's arbitration culture, arguing that without a deep-rooted shift in mindset among litigants, judges, and lawyers, formal reforms may remain underutilized.[4]

The establishment of the Arbitration Council of India (ACI) in 2019 was widely discussed as a promising regulatory development. Singh (2020) highlights the ACI's potential to bring coherence to India's fragmented institutional arbitration landscape.[5] Yet, the delayed operationalization of the ACI has led others, like Mehta (2022), to question the state's capacity to implement reform beyond drafting legislation.[6] This theme, of legislative intent failing at the level of implementation repeats across much of the academic literature.

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[3] Ghosh, M. (2016). Reforms in Indian arbitration: Walking the talk. *Indian Journal of Arbitration Law*, 5(1), 12–25.
[4] Krishnan, J. (2018). Culture, norms, and reform: Reimagining India's arbitration future. Law & Society Review, 52(4), 678–703.
[5] Singh, R. (2020). The promise of the Arbitration Council of India. *National Law School Arbitration Review*, 9(2), 40–59.
[6] Mehta, V. (2022). The deadlock of implementation: Why India's arbitration reforms stall. *South Asian Legal Studies Quarterly*, 11(3), 113–129.

International comparisons also feature prominently. Banerjee (2021) contrasts India with Singapore, arguing that the success of the Singapore International Arbitration Centre (SIAC) stems from a proactive judiciary and strong institutional support, both of which are still lacking in India.[7] Meanwhile, Malik (2022) underscores that India's judicial interference, especially in interpreting public policy exceptions, remains a significant deterrent for foreign investors.[8]

There is growing recognition of India's progress in recent rulings such as *PASL Wind Solutions v. GE Power* and *Amazon.com v. Future Retail*, which are praised for reinforcing party autonomy and recognizing emergency arbitration.[9] However, without consistent adoption across all levels of the judiciary, such landmark judgments risk being anomalies rather than the norm.

In sum, the literature paints a mixed picture. India's arbitration reforms are a step in the right direction, but their success hinges on institutional functionality, judicial coherence, and user confidence, which remain unevenly developed.

## LEGISLATIVE LANDSCAPE BEFORE THE AMENDMENT OF 2015

Before India began reforms in its arbitration laws, the country faced a lot of challenges that significantly undermined its credibility as a seat for commercial arbitration. Among others, the most pressing challenge was the excessive delays in the arbitral process, largely due to the unreasonable time taken by courts in enforcing or setting aside arbitral awards. The Arbitration and Conciliation Act, 1996, failed to provide clear guidelines to limit court interference. Courts frequently interpreted the scope of judicial review under Section 34 of the Arbitration and Conciliation Act, 1996, extensively, leading to unpredictability and prolonged litigation even after arbitration had concluded.

Also, the institutional arbitration system in India was underdeveloped. Most arbitrations in India were ad hoc, and there was a lack of a structured procedural framework or support mechanism from credible institutions. In contrast to global leaders like Singapore and the United Kingdom, India lacked a centralised regulating body to oversee and promote

[7] Banerjee, A. (2021). India v. Singapore: A tale of two arbitration seats. *Asian International Arbitration Journal*, 17(1), 55–72.
[8] Malik, S. (2022). Investor perception and arbitration reliability: India's legal paradox. *International Dispute Resolution Journal*, 19(2), 90–105.
[9] Supreme Court of India. (2021). *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, Civil Appeal Nos. 4492–4493 of 2021; *PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.*, Civil Appeal No. 1647 of 2021.

institutional arbitration or to recognise arbitrators and institutions. All these issues were addressed in the Arbitration and Conciliation (Amendment) Acts of 2015, 2019, and 2021.

## THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015

The Arbitration and Conciliation (Amendment) Act, 2015 marked a critical turning point. It was the first reform in the Arbitration and Conciliation Act, 1996. It was introduced following recommendations by the 246th Law Commission Report, which highlighted India's urgent need to modernize its arbitration law to attract international commercial disputes. The 2015 amendments aimed to address procedural inefficiencies and limit the scope of judicial intervention. Some of these changes are:

**Fast-track Arbitration:** One of the most innovative features introduced was the fast-track arbitration mechanism under Section 29B of the Arbitration and Conciliation Act, 1996. This provision allowed parties to agree to resolve disputes within six months based solely on written pleadings and limited oral hearings. Even though it is optional, it demonstrated a clear shift toward efficiency. It has made arbitration more cost effective and attractive, especially for SMEs. And startups.

*"29A. (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference……(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party"*[10]

**Narrow Judicial Review:** Another major reform was the narrowing of judicial review under Section 34 of the Arbitration and Conciliation Act, 1996, which clarified that an arbitral award could only be set aside if it was "patently illegal" or violated public policy in a very limited sense. This significantly reduced the scope for broad based challenges in court. Apart from section 34, section 9 (interim measures) and section 11 (appointment f arbitrators) were revised to limit judicial interference. This encouraged businesses to choose India as a seat of arbitration. By reducing judicial interference, the arbitration process has become more autonomous and efficient, aligning with international best practices.

*"34. Application for setting aside arbitral award. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with*

[10] Arbitration and Conciliation (Amendment) Act, 2015, § 15.

*sub-section (2) and sub-section (3). ….(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]"*[11]

**Mandatory time limit for giving awards:** The amendment also introduced mandatory time limits for giving awards, i.e., twelve months from the completion of pleadings, extendable by six months with the mutual consent of the parties. This provision was intended to ensure that arbitration would not mirror the delays and inefficiencies that are typical in regular litigation. This would boost investors' confidence by ensuring quicker dispute resolution and reducing judicial backlog by ensuring out-of-court settlements.

**No automatic stay on enforcement of awards:** Perhaps most significantly, the automatic stay on the enforcement of awards upon filing a challenge under section 34 was removed. Under the pre-amendment regime, enforcement was put on hold merely by filing an application to set aside the award. After the 2015 amendment, parties were required to specifically apply for a stay, which restored a balance between finality and fairness.

**Neutrality and Transparency:** The 2015 amendment added Schedule V and Schedule VII, which provided detailed grounds for challenging the impartiality of an arbitrator. By the addition of schedule V and Schedule VII, the act ensured that arbitrators maintain independence and neutrality. This promoted fairness and instilled trust among foreign parties and helped India move towards international standards like those in UNCITRAL Model Law.

**Commercial Courts and specialized benches:** Though established under a separate legislation, the setting up of commercial courts complemented the 2015 amendments by providing specialized benches for commercial disputes, including arbitration related matters. This improved the quality and speed of judicial assistance when needed and helped develop expertise in commercial law and arbitration.

The Arbitration and Conciliation (Amendment) Act, 2015 marked a turning point in India's arbitration landscape. It addressed long-standing issues like delays, lack of neutrality, and excessive court interference, which had deterred foreign investors and parties from choosing India as a preferred arbitration venue.

While there are still challenges (e.g., enforcement delays, perception issues), the 2015 amendment laid the foundation for a pro-arbitration regime, essential for India's ambition to

[11] Arbitration and Conciliation Act, 1996, § 34.

become a global commercial arbitration hub. Further amendments in 2019 and 2021 have continued this trajectory.

## THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2019

The 2019 Amendment Act is built upon the 2015 reforms by attempting to institutionalize arbitration in a more structured way. The establishment of the Arbitration Council of India (ACI) was its flagship initiative. The ACI was designed to grade arbitral institutions and accredit arbitrators, thereby promoting quality and professionalism in Indian arbitration. Some of the reforms by the 2019 amendments are:

**Promotion of Institutional Arbitration:** The 2019 Amendment introduced a new provision by amending section 11 of the Arbitration and Conciliation (Amendment) Act, 1996, and introducing the appointment of the arbitrators by arbitral institutions. Previously, these appointments were made by courts. Now, designated arbitral institutes that are notified by the Supreme Court and High Courts can appoint arbitrators. This encourages reliance on professional institutions (like MCIA, SIAC, etc.), which is the standard practice in global arbitration hubs.

*"11. Appointment of arbitrators. (1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties. …… Explanation. For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.]"*[12]

**Establishment of the Arbitration Council of India (ACI):** The 2019 Amendment introduced provisions for the setting up of the Arbitration Council of India (ACI). The Arbitration Council of India was responsible for grading arbitral institutions and arbitrators, maintain professional standards and promote institutional arbitration and legal reforms. The amendment also introduced provisions empowering the appointment of arbitrators by arbitral institutions designated by the Supreme Court or High Courts, moving away from the previously cumbersome judicial appointment process. This was a conscious step toward reducing court dependence and encouraging institutional arbitration.

[12] Arbitration and Conciliation (Amendment) Act, 2019, § 11.

The setting up of this organisation leads to standardized quality in this field and builds trust in Indian arbitration for foreign parties who are considering India as an arbitration seat.

*"43B. (1) The Central Government shall, by notification in the Official Gazette, establish, for the purposes of this Act, a Council to be known as the Arbitration Council of India to perform the duties and discharge the functions under this Act.*

*(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.*

*(3) The head office of the Council shall be at Delhi.*

*(4) The Council may, with the prior approval of the Central Government, establish offices at other places in India."*[13]

**Qualification of Arbitrators:** The eighth schedule of the act, introduced by the 2019 Amendment, specifies qualification for arbitrators. It initially restricted arbitrator eligibility and was criticized for excluding foreign arbitrators, but it showed India's intend to create a professional arbitration ecosystem. However, this requirement was later removed by the 2021 Amendment to re align with global standards. Though this provision is revised, it emphasized the need for qualified, professional arbitrators, a cornerstone of credible arbitration systems.

*"43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule:*

*Provided that the Central Government may, after consultation with the Council, by notification in the Official Gazette, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly"*[14]

**Confidentiality of proceedings:** Section 42A, as added by the 2019 amendment, emphasised on the confidentiality of information during the arbitral process. Arbitrators, parties, and arbitral institutions must maintain confidentiality of proceedings, except where disclosure is required by the law. This step brings Indian arbitration in line with global norms where confidentiality is a key advantage of arbitration over litigation.

[13] Arbitration and Conciliation (Amendment) Act, 2019, § 43B.
[14] Arbitration and Conciliation (Amendment) Act, 2019, § 43J.

*"42A. Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award."*[15]

**Protection to Arbitrators:** section 42B, as added by the 2019 amendment provides protection to the arbitrators. It states that arbitrators are not liable for any act or omission in good faith. This encourages experienced professionals to take up arbitration roles without fear of litigation. This helps in boosting the talent pool in India.

*"42B. No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder."* [16]

The Arbitration and Conciliation (Amendment) Act, 2019 was pivotal in shifting India's arbitration system from ad hoc to institutional arbitration, a hallmark of global arbitration centers like Singapore, London, and Paris.

By creating regulatory structures, ensuring confidentiality, and professionalizing arbitration, the 2019 Amendment marked significant progress toward India's long-term goal of becoming a global hub for commercial arbitration.

## THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2021

The Arbitration and Conciliation (Amendment) Act, 2021, is the latest step in India's ongoing effort to create a credible, efficient, and investor-friendly arbitration ecosystem, aligning with international standards. This amendment further refined the arbitration framework by focusing on two key areas: protecting the integrity of the arbitral process and liberalizing eligibility norms for arbitrators. The 2021 Amendment Act, while narrower in scope, attracted significant attention for reinstating a controversial provision.

Some of the reforms by the 2021 Amendment that helped India move closer to its goal of becoming a global hub for commercial arbitration are:

**Protection Against Fraudulent and Corrupt Arbitrations:** Section 36(3) of the Arbitration and Conciliation Act, 1996, after being amended in 2021, introduced an automatic stay on the

[15] Arbitration and Conciliation (Amendment) Act, 2019, § 9.
[16] Arbitration and Conciliation (Amendment) Act, 2019, § 9.

enforcement of arbitral awards. Before this amendment in 2021, filing a setting aside application under section 34 did not automatically stay enforcement. But after the amendment, the courts can now stay the enforcement of arbitral awards unconditionally if the award is prima facie induced by fraud or corruption

*"36(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*

*Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]"*[17]

This amendment enhanced the credibility and integrity of the arbitration system in India and helped build investor confidence by ensuring India does not enforce tainted or fraudulent awards. It also brings balance and protects honest parties and ensures justice without reverting to blanket stays.

**Removal of Restriction on Arbitrator's Qualification:** The 2021 amendment repealed the eighth schedule, which was earlier added by the 2019 amendment. The eighth schedule prescribed strict eligibility norms for arbitrators and excluded experienced foreign arbitrators, limiting India's ability to attract international arbitration. By deleting the Eighth Schedule, the 2021 Amendment allowed the Arbitration Council of India to prescribe more flexible norms through regulations.

By removing the eighth schedule, the act allows the appointment of foreign arbitrators, aligning India with international arbitration practices.

*"43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule:*

*Provided that the Central Government may, after consultation with the Council, by notification in the Official Gazette, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly."*[18]

[17] Arbitration and Conciliation (Amendment) Act, 2021, § 36(3).
[18] Arbitration and Conciliation (Amendment) Act, 2019, § 43J.

The Arbitration and Conciliation (Amendment) Act, 2021 helped India by safeguarding enforcement by ensuring that awards tainted by fraud or corruption are stayed. It also opens India's arbitration market to global talent by removing rigid qualification barriers for arbitrators.

These targeted reforms, though fewer than in 2015 and 2019, were strategic and timely, addressing practical concerns raised by stakeholders and aligning India more closely with UNCITRAL standards and international best practices.

They reinforce India's pro-arbitration stance and are vital in making the country a competitive and credible hub for international commercial arbitration.

## EVALUATING GROUND LEVEL PERFORMANCE

Despite the structural improvements brought by India's arbitration reforms, the on-ground reality reflects a shadier and somewhat sobering picture. While legislative intentions were bold and largely aligned with global standards, the practical impact of these amendments reveals mixed results. Evaluating India's performance as a preferred seat for arbitration involves examining several key areas: judicial behavior, institutional development, enforcement mechanisms, and international perceptions.

**Judicial Behavior**: The judiciary plays a pivotal role in shaping the arbitration ecosystem of any jurisdiction. Post-amendments, India's higher judiciary has shown commendable progress in respecting the autonomy of arbitral proceedings. The landmark case *PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.* reaffirmed party autonomy by allowing two Indian parties to choose a foreign seat of arbitration, thus signalling judicial maturity and adherence to international norms.[19]

However, this progressive stance is not uniformly mirrored across all levels. Many High Courts and lower courts continue to exhibit interventionist tendencies, particularly under Section 34 of the Act. For example, inconsistent interpretations of "public policy" and procedural irregularities have led to the setting aside of well-reasoned awards.[20] This duality creates a climate of legal uncertainty, especially for foreign stakeholders wary of judicial unpredictability. A study by Bhushan (2022) notes that nearly 38% of international awards

[19] Supreme Court of India. (2021). *PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.*, Civil Appeal No. 1647 of 2021.
[20] Bhushan, A. (2022). The evolution of arbitration in India: Promise versus performance. *Indian Journal of Arbitration Law*, 11(1), 45-60.

challenged in Indian courts between 2015 and 2020 faced extended delays or were partially overturned.[21]

**Institutional Arbitration**: The growth of institutions such as the Mumbai Centre for International Arbitration (MCIA) and the Nani Palkhivala Arbitration Centre (NPAC) signifies progress in India's shift from ad hoc to institutional arbitration. These institutions have adopted modern rules, expedited timelines, and empanelled international arbitrators.[22] Yet, caseload statistics suggest that institutional arbitration in India still lags significantly behind global leaders. For instance, MCIA reported just 39 new cases in 2022, compared to SIAC's 357 cases in the same period.[23] This disparity stems from limited global recognition, a lack of standardization in domestic arbitration practices, and skepticism among commercial entities, especially foreign investors.

**Enforcement and Timeliness**: Enforcement remains a persistent challenge. Despite the 2015 amendment's emphasis on limiting court interference and setting strict timelines for award completion (12 months under Section 29A), many cases continue to suffer from delays, especially at the enforcement stage.[24] Courts often grant generous extensions, citing "interest of justice," thereby diluting the mandatory nature of these deadlines. Additionally, the underutilization of fast-track arbitration procedures, which is enabled by the same amendment, reflects a reluctance to adopt streamlined, document-based resolution models.[25]

**Foreign Party Perceptions**: International surveys have consistently ranked India low in terms of arbitration-friendliness. The Queen Mary University of London and White & Case LLP 2021 survey listed India outside the top 10 preferred arbitration seats, citing enforcement delays, judicial inconsistency, and underdeveloped institutional infrastructure as key deterrents.[26] While recent rulings and reforms have improved India's domestic standing, they have not yet translated into substantial trust among global arbitration users.

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[21] Ibid.
[22] Mumbai Centre for International Arbitration (MCIA). (2023). *Annual Report*. Retrieved from https://mcia.org.in/
[23] Singapore International Arbitration Centre (SIAC). (2023). *Annual Report.* Retrieved from https://siac.org.sg/.
[24] Kumar, R., & Rao, S. (2023). Time limits in arbitration: A reality check. *Journal of Indian Law and Practice*, 8 (2), 120-135.
[25] Mehta, V. (2022). Institutional arbitration and the non-functional ACI: A missed opportunity. *Economic and Political Weekly*, 57(14), 22-25.
[26] Queen Mary University of London. (2021). *2021 International Arbitration Survey: Adapting arbitration to a changing world*. Retrieved from https://arbitration.qmul.ac.uk/research/2021.

In sum, while India's arbitration reforms have initiated a foundational transformation, the journey toward becoming a global arbitration hub is far from complete. Judicial inconsistency, slow enforcement, and underutilized institutional mechanisms continue to undermine the legislative vision. Bridging this implementation gap is essential for India to elevate from aspirational reform to realized arbitration leadership.

## COMPARATIVE ANALYSIS

Comparative jurisdictional evaluation is essential to understand India's relative position in the global arbitration ecosystem. By analysing Singapore and the United Kingdom, two consistently top-ranked seats, we gain insight into what differentiates successful arbitration hubs from emerging contenders like India.

### India vs. Singapore

Singapore's rapid emergence as a premier arbitration hub is attributed to a combination of proactive legislative reforms, state support, and consistent judicial behavior. The Singapore International Arbitration Centre (SIAC) has built a reputation for procedural efficiency, transparent administration, and international inclusivity.[27] The Singapore judiciary is renowned for its non-interventionist approach, offering strong support to arbitration without overstepping boundaries. The *BNX v. BNY* case in 2020, for instance, highlighted the court's deference to tribunal autonomy and reluctance to set aside awards on trivial procedural grounds.[28]

In contrast, India's journey has been more fragmented. While MCIA and other domestic institutions attempt to model themselves after SIAC, issues like a lack of standardization, limited global awareness, and weaker infrastructure reduce their international traction. Indian courts also vary widely in their interpretations of "public policy" and "natural justice", terms that have been more narrowly and predictably defined in Singaporean jurisprudence.[29]

A further point of divergence is enforcement. SIAC's awards are typically enforced within 3 to 6 months, aided by strong judicial backing and minimal litigation. In India, however, enforcement often extends to years due to challenges, interim injunctions, and execution delays.[30]

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[27] Tan, D. (2022). Comparative arbitral jurisprudence: Singapore and India. *International Arbitration Review*, 15(1), 50-70.
[28] Singapore Supreme Court. (2020). *BNX v. BNY*, [2020] SGHC 123.
[29] Choudhury, N. (2023). Enforceability of emergency arbitration awards in India: A critical review. *Asian International Arbitration Journal*, 19(2), 90-108.
[30] Ibid.

### India vs. United Kingdom

London, under the London Court of International Arbitration (LCIA), remains one of the most trusted seats for arbitration, largely due to its historical credibility, legal sophistication, and political neutrality. The UK Arbitration Act 1996 provides a robust but minimalistic framework that promotes autonomy, finality, and enforceability.[31] Judicial review of arbitral awards is highly limited, and public policy exceptions are interpreted in an extremely narrow sense, aligning with international standards.

India's framework is theoretically similar. The post-2015 reforms emulate several features of the UK model, including limited judicial review and removal of automatic stay on awards. However, in practice, courts in India often fail to adopt the minimalist, hands-off approach prevalent in UK jurisprudence.[32] Furthermore, while London-based institutions draw international arbitrators and parties due to high levels of neutrality and procedural clarity, India still struggles with perceptions of domestic bias, particularly when both parties are not Indian.

The comparison clearly shows that while India's legal reforms are a step in the right direction, the country must focus on consistent implementation, institutional independence, and judicial training to match the levels of Singapore and the UK. Without addressing ground-level weaknesses, India risks falling short of the global standards it aspires to meet.

## KEY CHALLENGES AND GAPS

While India's legislative reforms are commendable in both scope and intent, several structural and operational challenges persist, undermining its ambitions to become a truly global arbitration hub. These challenges stem from legal, institutional, cultural, and procedural constraints that together create a fragmented and sometimes hostile arbitration environment.

**Incomplete Implementation of the Arbitration Council of India (ACI)**: The 2019 Amendment introduced the Arbitration Council of India (ACI) as a central regulatory body intended to standardize accreditation norms, institutionalize arbitration, and foster professional development.[33] However, despite its legal establishment, ACI remains non-functional due to bureaucratic delays, lack of appointments, and absence of operational clarity.[34] The failure to

[31] Redfern, A., & Hunter, M. (2021). *Law and practice of international commercial arbitration* (6th ed.). Oxford University Press.
[32] Choudhury, N. (2023), supra note 14.
[33] Arbitration and Conciliation (Amendment) Act, 2019, § 43M.
[34] Gupta, A. (2023). The dormant giant: ACI and India's arbitration future. *Journal of Indian Arbitration*, 3(2), 45–56.

operationalize this cornerstone institution has left a regulatory vacuum, especially in grading arbitral institutions and accrediting arbitrators, which are crucial for international confidence.

**Resistance to Institutional Arbitration**: India remains heavily reliant on ad hoc arbitration, which lacks procedural consistency and institutional oversight.[35] Institutional arbitration requires parties to submit to pre-established rules and accept administrative intervention, which is often resisted by Indian litigants and legal practitioners who are more comfortable with flexible, ad hoc arrangements. This cultural inertia hampers the growth of institutional forums like the MCIA and ICA, reducing India's appeal to foreign investors accustomed to structured systems like SIAC or LCIA.[36]

**Judicial Training and Legal Culture**: Indian judges, especially at the district and High Court levels, often lack specialized training in arbitration law. This results in inconsistent application of arbitration principles, liberal interpretation of "public policy," and undue interference in arbitral awards.[37] While the Supreme Court has set progressive precedents, lower courts frequently deviate, creating unpredictability and delays in enforcement. Moreover, many judges approach arbitration with a litigation mindset, treating it as an extension of adversarial court proceedings.[38]

**Limited Use and Recognition of Emergency Arbitration**: Emergency arbitration (EA) is a vital feature in international arbitration, offering interim relief before the tribunal is fully constituted. However, Indian law is ambiguous on the enforceability of EA awards, particularly those issued by foreign-seated tribunals.[39] Although the Supreme Court in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* upheld a Singapore-seated EA award, the judgment lacks statutory reinforcement and creates uncertainty in future applications.[40] This legal ambiguity deters parties from choosing India as a seat when emergency measures are necessary.

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[35] Mehta, R. (2022). Ad hoc arbitration: The Achilles heel of India's arbitral regime. *South Asian Legal Review*, 5(1), 87–101.
[36] Ibid.
[37] Rao, K. (2023). Judicial unpredictability and arbitration: A critique of Indian jurisprudence. *Indian Law Quarterly*, 49(2), 220–239.
[38] Sharma, T. (2021). Litigation culture and the future of arbitration in India. *Business Law Review*, 17(3), 112–130.
[39] Das, S. (2022). Emergency arbitration: India's uneasy embrace. *Asia-Pacific Arbitration Journal*, 8(4), 90–104.
[40] Supreme Court of India. (2021). *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, Civil Appeal No. 4492–4493 of 2021.

**Inconsistencies in the Public Policy Exception**: Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 allows for setting aside awards that are in conflict with the "public policy of India." Despite efforts to narrow this provision post-2015, its interpretation remains inconsistent. Courts have set aside awards for reasons as vague as “morality” and “justice,” contradicting the internationally accepted principle of finality in arbitration.[41] This undermines both domestic and foreign stakeholder confidence.

India’s legal reforms lay a promising foundation, but their success depends on effective implementation, consistent judicial support, and an adaptive legal culture. Without addressing these deep-rooted gaps, India’s aspiration to emerge as a leading arbitration hub will remain largely rhetorical.

## RECOMMENDATIONS

To close the gap between legislative aspiration and practical implementation, a series of actionable reforms and policy-level shifts are necessary. These recommendations focus on institutional capacity, judicial reform, international outreach, and procedural modernization.

**Operationalize and Empower the ACI**: First and foremost, the Arbitration Council of India (ACI) must be made functional. The Ministry of Law and Justice should expedite appointments and provide operational guidelines.[42] To avoid political interference, ACI should function with administrative and financial autonomy, with a balanced representation of practitioners, academicians, and international experts. Once functional, ACI can standardize institutional arbitration practices, accredit arbitrators, and provide quality assurance to both domestic and foreign users.[43]

**Judicial Training and Arbitration Sensitization**: A robust training program must be introduced for sitting judges, especially at the district and High Court levels. These programs should focus on core arbitration doctrines, international best practices, and the importance of judicial restraint. Additionally, judicial performance in arbitration-related matters should be monitored to reduce unpredictability and overreach.[44] Law schools and bar councils should also integrate arbitration law and practice into their curriculums to build future competence.

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[41] Choudhury, N. (2023). Public policy and the Indian arbitration landscape: Narrowing the lens. *Asian Journal of Comparative Law*, 15(1), 77–93.
[42] Ministry of Law and Justice, Government of India. (2022). *Status Report on the Arbitration Council of India*.
[43] Ibid.
[44]Kumar, V. (2022).Educating the Bench: Judicial training and arbitration law. *National Law Review*,14(1),33–47.

**Clarify Enforceability of Emergency and Foreign-Seated Interim Awards**: The legislature should amend the Act to explicitly recognize and enforce emergency arbitration orders, irrespective of seat, in line with global practices. This would provide parties with immediate, effective relief and encourage the use of India-seated arbitration for urgent matters.[45] Clarity on enforcement would also prevent divergent judicial interpretations and strengthen procedural certainty.

**Promote International Institutional Collaborations**: India should actively pursue institutional partnerships with global arbitration bodies like SIAC, ICC, and HKIAC. These collaborations can offer technical assistance, capacity building, and reputational enhancement. MCIA and similar Indian institutions could co-administer disputes with global players to build trust and credibility.[46]

**Public Awareness and Corporate Sensitization**: A public-facing campaign should be launched to educate corporate entities, legal professionals, and foreign investors about India's arbitration reforms, the benefits of institutional arbitration, and recent judicial advancements. Government support, such as tax incentives for arbitration services and subsidies for institutional use, can further boost uptake.[47]

Transforming India into a global arbitration hub requires more than legal reform; it demands institutional clarity, judicial coherence, and international outreach. By implementing these targeted recommendations, India can significantly enhance its global standing and finally align its arbitration performance with its promise.

## CONCLUSION

India's journey toward becoming a preferred seat for international arbitration is a complex interplay of ambition, reform, and systemic inertia. The 2015, 2019, and 2021 amendments to the Arbitration and Conciliation Act mark a significant legislative shift toward modernity, autonomy, and global alignment. These reforms exhibit a clear intent to minimize court interference, promote institutional arbitration, and build credibility on the international stage.

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[45] Jain, P. (2023). Statutory recognition of emergency arbitration in India: The next frontier. *International Arbitration Law Review*, 11(2), 145–160.
[46] Basu, A. (2021). India and the global arbitration community: Paths to convergence. *Journal of Dispute Resolution*, 7(1), 20–35.
[47] Ministry of Commerce and Industry. (2023). *Ease of Doing Business: Arbitration Promotion Initiatives*. Retrieved from https://commerce.gov.in/.

Yet, this promise is only partially realized. Judicial inconsistencies, institutional inertia, and a lack of procedural uniformity continue to plague the arbitration landscape. The non-functional status of the ACI, limited uptake of institutional frameworks, and ambiguous enforceability of emergency awards illustrate the gap between legal theory and implementation.

Comparative jurisdictions such as Singapore and the United Kingdom highlight that the effectiveness of arbitration reform depends not only on the law itself but on its cultural acceptance, infrastructural support, and judicial discipline. India must focus on these operational and cultural dimensions if it is to genuinely attract international arbitration.

In conclusion, India stands at a crossroads. It has laid down the legislative groundwork for a credible arbitration ecosystem but must now focus on execution, consistency, and outreach. Only then can it transition from being a reformative aspirant to a recognized leader in global commercial arbitration.